

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS,

KENNETH MOORE

Plaintiff,

Vs.

No. 20-2428-SAC

C.R. BARD, INC., BARD
PERIPHERAL VASCULAR, INC.,
MCKESSON CORPORATION, et al.,

Defendants.

MEMORANDUM AND ORDER

The court filed an order on November 19, 2020, (ECF# 40), that not only summarized how this case came to be transferred here but also addressed the two pending motions to dismiss. The order denied the motion to dismiss filed by C.R. Bard, Inc. and Bard Peripheral Vascular, Inc. ("Bard defendants") as moot. *Id.* The order also directed the plaintiff Kenneth Moore ("Moore") to show cause why the court should not consider and decide the defendant McKesson Corporation's motion to dismiss as uncontested. *Id.* The plaintiff Moore has responded stating that he "does not oppose or contest" McKesson's motion to dismiss (ECF# 11) without prejudice for lack of subject matter jurisdiction. ECF# 41. The court's prior order noted that McKesson was asking for dismissal without prejudice because it was a non-diverse defendant fraudulently joined for which subject

matter jurisdiction was lacking.

The court finds that the United States District Court for the Northern District of Texas exercised removal jurisdiction over this case by severing and transferring it. The plaintiff does not challenge this court's subject matter jurisdiction and does not oppose McKesson's motion to dismiss. Accepting the facts and arguments on their face as presented in the notice of removal, the court will grant McKesson's pending motion to dismiss.

IT IS THEREFORE ORDERED that the defendant McKesson's motion to dismiss without prejudice (ECF# 11) is granted as unopposed and uncontested.

Dated this 2nd day of December, 2020, Topeka, Kansas.

/s Sam A. Crow
Sam A. Crow, U.S. District Senior Judge